

Document:-
A/CN.4/SR.816

Summary record of the 816th meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1965, vol. I

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

sion to reach a decision on Mr. Rosenne's proposal at the next session.

It was agreed to defer consideration of Mr. Rosenne's proposal for an additional sub-paragraph in article 29 until the next session.

Article 29 was adopted by 16 votes to none.

ARTICLE 29 (*bis*) (Communications and notifications to contracting States)

61. The CHAIRMAN invited the Commission to consider the text of a new article 29 (*bis*) proposed by the Drafting Committee, which read :

"Whenever it is provided by the present articles that a communication or notification shall be made to contracting States, such communication or notification shall be made :

(a) In cases where there is no depositary, directly to each of the States in question;

(b) In cases where there is a depositary, to the depositary for communication to the States in question".

62. Sir Humphrey WALDOCK (Special Rapporteur) explained that the purpose of the new article proposed by the Drafting Committee was to give effect to Mr. Tunkin's suggestion¹⁰ that the drafting of the provisions concerning the depositary should be simplified by consolidating in one article provisions covering both the case where there was and the case where there was not a depositary.

Article 29 (bis) was adopted by 16 votes to none.

63. Sir Humphrey WALDOCK, Special Rapporteur, said that, after examining Mr. Rosenne's proposal (A/CN.4/L.108)¹¹ for the inclusion of a provision dealing with the time at which a notification became effective and providing a short interval for the necessary administrative processes to be carried out, the Drafting Committee had decided that the proposal should be discussed at a later stage, after virtually all the articles in the draft had been completed, because it had a bearing on the provisions concerning withdrawal from and termination of a treaty.

64. Mr. ROSENNE said that the Drafting Committee's decision was acceptable to him.

The meeting rose at 11.40 a.m.

¹⁰ 803rd meeting, para. 72.

¹¹ 803rd meeting, para. 30.

816th MEETING

Friday, 2 July 1965, at 10 a.m.

Chairman: Mr. Milan BARTOŠ

Present: Mr. Ago, Mr. Amado, Mr. Briggs, Mr. Castrén, Mr. Elias, Mr. Lachs, Mr. Pal, Mr. Pessou, Mr. Reuter, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Tunkin, Mr. Verdross, Sir Humphrey Waldock, Mr. Yasseen.

Law of Treaties

(A/CN.4/175 and Add.1-4, A/CN.4/177 and Add.1 and 2, A/CN.4/L.107)

(continued)

[Item 2 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE
(continued)

1. The CHAIRMAN invited the Commission to consider the texts of the articles which had been referred back to and revised by the Drafting Committee.

ARTICLE 2 (Treaties and other international agreements not within the scope of the present articles)¹

2. Sir Humphrey WALDOCK, Special Rapporteur, said that the only changes in the revised text of article 2 were drafting changes; it read :

"The fact that the present articles do not relate

(a) To treaties concluded between States and other subjects of international law or between such other subjects of international law; or

(b) To international agreements not in written form

shall not affect the legal force of such treaties or agreements or the application to them of any of the rules set forth in the present articles to which they would be subject independently of these articles."

Article 2 was adopted by 14 votes to none.

ARTICLE 3 (Capacity of States to conclude treaties)²

3. Sir Humphrey WALDOCK, Special Rapporteur, said that the revised text of article 3 read :

"1. Every State possesses capacity to conclude treaties.

2. States members of a federal union may possess a capacity to conclude treaties if such capacity is admitted by the federal constitution and within the limits there laid down."

4. Paragraph 1 in the English version had been re-drafted in order to conform to the French. Paragraph 2 had been modified on the lines suggested by Mr. Ago at the 811th meeting. The Drafting Committee hoped that the changes would go a considerable way towards meeting some of the objections to the earlier text and that the revised text would commend itself to the majority of the Commission.

5. Mr. BRIGGS asked that the two paragraphs be put to the vote separately.

Paragraph 1 was adopted by 11 votes to 2, with 1 abstention.

Paragraph 2 was adopted by 7 votes to 3, with 4 abstentions.

Article 3 as a whole was adopted by 7 votes to 3, with 4 abstentions.

¹ For earlier discussions, see 777th meeting, in particular paras. 71-73 and 78, and 810th meeting, paras. 12-27.

² For earlier discussions, see 779th meeting, paras. 1-88, 780th meeting, paras. 1-16, 810th meeting, paras. 28-78, and 811th meeting, paras. 2-51.

6. Mr. BRIGGS said that he had voted against article 3 because as it stood it was inaccurate and inadequate.

7. Mr. RUDA explained that he had voted against article 3 because he could not see any real difference between the new text and the earlier one.

8. Mr. ROSENNE said that he had voted in favour of paragraph 2—though with some hesitation—because it was an improvement on the previous text and could be submitted to governments.

9. Mr. TSURUOKA explained that he had abstained from voting on the article as a whole because he had voted for paragraph 1 and against paragraph 2.

ARTICLE 4 (Full powers to represent the State in the negotiation and conclusion of treaties)⁸

10. Sir Humphrey WALDOCK, Special Rapporteur, said that the only changes in the revised text of article 4 were drafting changes; it read :

“ 1. Except as provided in paragraph 2, a person is considered as representing a State for the purpose of negotiating, adopting or authenticating the text of a treaty or for the purpose of expressing the consent of the State to be bound by a treaty only if :

(a) He produces an appropriate instrument of full powers; or

(b) It appears from the circumstances that the intention of the States concerned was to dispense with full powers.

2. In virtue of their functions and without having to produce an instrument of full powers, the following are considered as representing their State :

(a) Heads of State, Heads of Government and Ministers for Foreign Affairs, for the purpose of performing all acts relating to the conclusion of a treaty;

(b) Heads of diplomatic missions, for the purpose of the negotiation and adoption of the text of a treaty between the accrediting State and the State to which they are accredited;

(c) Representatives accredited by States to an international conference or to an organ of an international organization, for the purpose of the negotiation and adoption of the text of a treaty.”

11. Mr. ROSENNE said that, in order to bring paragraphs 2 (b) and (c) into line with paragraph 2 (a), the words “ negotiating and adopting ” should be substituted for the words “ the negotiation and adoption of ”.

12. Although he still maintained the view he had expressed earlier⁴ concerning paragraph 2 (c), he would vote in favour of the article.

13. Sir Humphrey WALDOCK, Special Rapporteur, said that Mr. Rosenne’s drafting change was acceptable.

Article 4, as thus amended, was adopted by 16 votes to none.

⁸ For earlier discussions, see 780th meeting, paras. 27-85, 781st meeting, paras. 1-41, and 811th meeting, paras. 52-82.

⁴ 811th meeting, paras. 57, 80 and 81.

ARTICLE 11 (Consent to be bound expressed by signature)⁵

14. Sir Humphrey WALDOCK, Special Rapporteur, said that the revised text of article 11 read :

“ 1. The consent of a State to be bound by a treaty is expressed by the signature of its representative when :

(a) The treaty provides that signature shall have that effect;

(b) It appears from the circumstances of the conclusion of the treaty that the States concerned were agreed that signature should have that effect;

(c) The intention of the State in question to give that effect to the signature appears from the full powers of its representative or was expressed during the negotiations.

2. For the purposes of paragraph 1 :

(a) The initialling of a text constitutes a signature of the treaty when it appears from the circumstances that the contracting States so agreed;

(b) The signature *ad referendum* of a treaty by a representative, if confirmed by his State, constitutes a full signature of the treaty.”

15. The Drafting Committee had rejected the suggestion made in the Commission that the order of paragraph 1 (b) and (c) should be reversed.⁶ The wording of paragraph 1 (c) had been altered without any change of substance.

16. Mr. ROSENNE said that, for the sake of consistency with earlier articles, the words “ instrument of ” should be inserted before the words “ full powers ” in paragraph 1 (c).

17. Sir Humphrey WALDOCK, Special Rapporteur, said that Mr. Rosenne’s amendment was acceptable.⁷

Article 11, as thus amended, was adopted by 17 votes to none.

ARTICLE 12 (Consent to be bound expressed by ratification, acceptance or approval)⁸

18. Sir Humphrey WALDOCK, Special Rapporteur, said that the revised text of article 12 read :

“ 1. The consent of a State to be bound by a treaty is expressed by ratification when :

(a) The treaty or an established rule of an international organization provides for such consent to be expressed by means of ratification;

(b) It appears from the circumstances of the conclusion of the treaty that the States concerned were agreed that ratification should be required;

(c) The representative of the State in question has signed the treaty subject to ratification; or

(d) The intention of the State in question to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiations.

⁵ For earlier discussions, see 782nd meeting, paras. 74-95, 783rd meeting, paras. 1-81, and 812th meeting, paras. 1-34.

⁶ 812th meeting, para. 7.

⁷ But see paras. 19-21 *infra*.

⁸ For earlier discussions, see 783rd meeting, paras. 82-98, 784th and 785th meetings, 786th meeting, paras. 5-101, 787th meeting, paras. 99-110, and 812th meeting, paras. 35-64.

2. The consent of a State to be bound by a treaty is expressed by acceptance or approval under conditions similar to those which apply to ratification."

19. Mr. ROSENNE said that the words "instrument of" should be inserted before the words "full powers" in paragraph 1 (d).

20. Mr. TUNKIN said he was opposed to Mr. Rosenne's amendment, because it would be restrictive. The representative's full powers might be embodied not in an instrument but, for instance, in a telegram from his government or in a *note verbale*.

21. Sir Humphrey WALDOCK, Special Rapporteur, said that Mr. Tunkin's point was pertinent and was possibly applicable to the previous article. The best course would be to leave the two articles unchanged and for the Drafting Committee to review the definition of full powers at the next session, bearing in mind in particular the modern trend towards less formality over the form of full powers.

22. Mr. TSURUOKA said he thought that the Commission had agreed that the words "apply to" in paragraph 2 should be replaced by the words "are required for".

23. Sir Humphrey WALDOCK, Special Rapporteur, said that he would prefer the French text to be brought into line with the English by using the words *s'appliquent* instead of *valent*.

24. Mr. REUTER considered that both the formula proposed by the Drafting Committee and that of the Special Rapporteur served the purpose and that there was no reason why the words *s'appliquent* should not be used.

25. Mr. LACHS said he supported the Special Rapporteur's suggestion concerning Mr. Rosenne's amendment. It might be found appropriate to refer to the instrument of full powers in article 11, but article 12, paragraph 1 (d), should be left as it stood.

26. Mr. ROSENNE said that he would be satisfied if the point was considered when the Commission came to review the draft articles as a whole.

Article 12 was adopted by 17 votes to none.

27. The CHAIRMAN, speaking as a member of the Commission, explained that he had voted for articles 11 and 12 out of gratitude to the Drafting Committee, even though he still maintained his view that ratification should be the general rule.

ARTICLE 15 (Exchange or deposit of instruments of ratification, accession, acceptance or approval)⁹

28. Sir Humphrey WALDOCK, Special Rapporteur, said that the Drafting Committee had introduced some drafting changes and had shortened article 15 to read:

"Unless the treaty otherwise provides, instruments of ratification, accession, acceptance or approval become operative:

(a) By their exchange between the contracting States;

(b) By their deposit with the depositary; or

(c) By notification to the contracting States or to the depositary, if so agreed."

29. The CHAIRMAN, speaking as a member of the Commission, said that he did not find the drafting of sub-paragraph (c) very satisfactory, but approved the idea expressed in the provision.

Article 15 was adopted by 16 votes to none, with 1 abstention.

ARTICLE 16 (Consent relating to a part of a treaty or to alternative clauses)¹⁰

30. Sir Humphrey WALDOCK, Special Rapporteur, said that the revised text of article 16 read:

"1. Without prejudice to the provisions of articles 18 to 22, the consent of a State to be bound by part of a treaty is effective only if the treaty so permits or the other contracting States so agree.

2. The consent of a State to be bound by a treaty which permits a choice between differing provisions is effective only if it is made plain to which of the provisions the consent relates."

31. The opening phrase in paragraph 1 had been inserted in order to meet the point, made during the earlier discussion of the article, that it was important to safeguard against any inconsistency between the article and the provisions concerning reservations.

32. In substance, paragraph 2 remained the same but the wording had been changed and was somewhat closer to that approved at the fourteenth session. It was not easy to find suitable wording to express the idea of a choice between alternative texts.

33. In reply to remarks by Mr. CASTRÉN and Mr. AGO, he said that there was a mistake in the title of the article, which should read "Consent relating to a part of a treaty and choice between differing provisions".

34. Mr. LACHS said that surely the choice was not between differing provisions but between two sets of alternative clauses with the same content but differently expressed.

35. Sir Humphrey WALDOCK, Special Rapporteur, said he disagreed. Paragraph 2 dealt with the choice between substantively different provisions and the English text was correct. The word "differing" had been substituted for the word "alternative", which had given rise to criticism both in the Commission and by governments.

Article 16, with the amended title, was adopted by 17 votes to none.

ARTICLE 17 (Obligation of a State not to frustrate the object of a treaty prior to its entry into force)¹¹

36. Sir Humphrey WALDOCK, Special Rapporteur, said that the revised text of article 17 read:

"A State is obliged to refrain from acts calculated to frustrate the object of a proposed treaty when:

¹⁰ For earlier discussion, see 812th meeting, paras. 78-96.

¹¹ For earlier discussions, see 788th meeting, 789th meeting, paras. 1-58, and 812th meeting, paras. 97-118.

⁹ For earlier discussions, see 787th meeting, paras. 4-98, and 812th meeting, paras. 65-77.

(a) It has agreed to enter into negotiations for the conclusion of the treaty, while the negotiations are in progress;

(b) It has signed the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty;

(c) It has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.”

37. The Drafting Committee had inserted the word “proposed” in the introductory phrase in order to overcome the objection to the previous text, on grounds of logic, that at the time when a State agreed to enter into negotiations, or while they were in progress, there was no treaty in existence, although there could be said to be an object of the treaty.

38. The wording of sub-paragraph (b) had been modified in response to complaints that the previous text was too vague and subjective.

Article 17 was adopted by 16 votes to none, with 1 abstention.

39. Mr. ROSENNE explained that, although he had voted in favour of the article, he still maintained his reservation concerning sub-paragraph (b), as he did not consider that signature could be regarded as the only point in time from which the obligation became operative; in his opinion, provision should be made for the case where a State took part in the adoption of the text of a treaty but only became a party to it through accession.

40. He was also not satisfied with sub-paragraph (c).

ARTICLE 18 (Formulation of reservations)¹²

41. Sir Humphrey WALDOCK, Special Rapporteur, said that the changes in article 18 were of a purely drafting character; the revised text now read:

“A State may, when signing, ratifying, acceding to, accepting or approving a treaty, formulate a reservation unless:

(a) The reservation is prohibited by the treaty or by the established rules of an international organization;

(b) The treaty authorizes specified reservations which do not include the reservation in question; or

(c) In cases where the treaty contains no provisions regarding reservations, the reservation is incompatible with the object and purpose of the treaty.”

Article 18 was adopted by 16 votes to none, with 1 abstention.

42. Mr. TSURUOKA explained that he had abstained in the vote on the article because he doubted whether sub-paragraph (c) would work satisfactorily in practice for the benefit of international law.

ARTICLE 19 (Acceptance of and objection to reservations)¹³

43. Sir Humphrey WALDOCK, Special Rapporteur, said that the revised text of article 19 read:

“1. A reservation expressly or impliedly authorized by the treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.

2. When it appears from the limited number of the contracting States, the object and purpose of the treaty and the circumstances of its conclusion that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound, a reservation requires acceptance by all the States parties to the treaty.

3. When a treaty is a constituent instrument of an international organization, the reservation requires the acceptance of the competent organ of that organization, unless the treaty otherwise provides.

4. In cases not falling under the preceding paragraphs of this article:

(a) Acceptance by another contracting State of the reservation constitutes the reserving State a party to the treaty in relation to that State if or when the treaty is in force;

(b) An objection by another contracting State to a reservation precludes the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is expressed by the objecting State;

(c) An act expressing the State's consent to be bound which is subject to a reservation is effective as soon as at least one other contracting State which has expressed its own consent to be bound by the treaty has accepted the reservation.

5. For the purposes of paragraphs 2 and 4 a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.”

44. Certain drafting changes had been made in paragraph 2. The word “nature” had been criticized for not being entirely concordant with the earlier articles and had been replaced by the phrase “the object and purpose”. The Drafting Committee had also decided to change the order in that paragraph and to refer first to the limited number of contracting States.

45. In paragraph 3, the reference to “admissibility” had been changed to a reference to “acceptance” in order to bring the provision into line with the general scheme of the articles concerning reservations.

46. The content of the previous paragraph 6 had been transferred to form a new sub-paragraph (c) in paragraph 4, to which it more properly belonged.

47. Mr. ROSENNE asked whether the words “if or when” in paragraph 4 (a) should not read “if and when”.

48. Sir Humphrey WALDOCK, Special Rapporteur, replied in the negative. A reservation might be accepted when a treaty was already in force or at a moment when, for want of the requisite number of ratifications, the treaty was not yet in force. The words “or when” could be omitted, though he thought that they should stand, as they rendered the provision more exact.

¹² For earlier discussion, see 813th meeting, paras. 1-29.

¹³ For earlier discussion, see 813th meeting, paras. 30-71.

49. At the request of Mr. BRIGGS, the CHAIRMAN put article 19 to the vote paragraph by paragraph.

Paragraph 1 was adopted by 17 votes to none.

Paragraph 2 was adopted by 17 votes to none.

Paragraph 3 was adopted by 17 votes to none.

Paragraph 4 was adopted by 15 votes to 2.

Paragraph 5 was adopted by 16 votes to none, with 1 abstention.

Article 19 as a whole was adopted by 15 votes to 1 with 1 abstention.

50. Mr. BRIGGS explained that he had voted against article 19 as a whole because the rule set out in paragraph 4 was not an existing rule of international law and was not one that he regarded it as desirable that the Commission should recommend to States.

51. Mr. ROSENNE said that he had abstained in the vote on paragraph 5, because he was not convinced that the expression "it was notified" dealt adequately with the problem of the relevant time factor.

52. Mr. TSURUOKA explained that he had abstained in the vote on the article as a whole because he objected to paragraph 4, for reasons similar to those given by Mr. Briggs.

53. Mr. RUDA explained that he had voted for paragraph 2, which was intended to cover the case of treaties concluded between a small number of States, on the understanding that the Commission would later consider the case of a treaty concluded within a small group of States belonging to an international organization which applied a different rule to treaties concluded under its auspices, thereby taking into account the practice of the Latin American States.

ARTICLE 20 (Procedure regarding reservations)¹⁴

54. Sir Humphrey WALDOCK, Special Rapporteur, said that the revised text of article 20 read :

"1. A reservation, an express acceptance of a reservation, and an objection to a reservation must be formulated in writing and communicated to the other contracting States.

2. If formulated on the occasion of the adoption of the text or upon signing the treaty subject to ratification, acceptance or approval, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation. However, an objection to the reservation made previously to its confirmation does not itself require confirmation."

55. A change of substance had been made in paragraph 2, to which a sentence had been added dispensing with the requirement of confirmation of an objection to a reservation, one of the reasons being that political considerations might render such an obligation unacceptable to States.

Article 20 was adopted by 17 votes to none.

¹⁴ For earlier discussion, see 813th meeting, paras. 72-93.

ARTICLE 21 (Legal effects of reservations)¹⁵

56. Sir Humphrey WALDOCK, Special Rapporteur, said that the revised text of article 21 read :

"1. A reservation established with regard to another party in accordance with articles 18, 19 and 20 :

(a) Modifies for the reserving State the provisions of the treaty to which the reservation relates to the extent of the reservation; and

(b) Modifies those provisions to the same extent for such other party in its relations with the reserving State.

2. The reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.

3. When a State objecting to a reservation agrees to consider the treaty in force between itself and the reserving State, the provision to which the reservation relates does not apply as between the two States to the extent of the reservation."

57. The changes were of a drafting character. The Drafting Committee had discussed the objections to the word "modifies" but had decided not to change it.

58. Mr. TSURUOKA suggested that, in paragraph 3, the word "provision" should perhaps be in the plural.

59. Sir Humphrey WALDOCK, Special Rapporteur, said he agreed that, to be consistent with paragraphs 1 and 2, the word "provision" should be used in the plural in paragraph 3.

60. Mr. REUTER agreed with the Special Rapporteur that the plural should be used in both texts for the sake of symmetry.

Article 21, as amended, was adopted by 17 votes to none.

ARTICLE 22 (Withdrawal of reservations)¹⁶

61. Sir Humphrey WALDOCK, Special Rapporteur, said that article 22 read :

"1. Unless the treaty otherwise provides, a reservation may be withdrawn at any time and the consent of a State which has accepted the reservation is not required for its withdrawal.

2. Unless the treaty otherwise provides or it is otherwise agreed, the withdrawal becomes operative when notice of it has been received by the other contracting States."

62. The Drafting Committee had no changes to propose to that text, which was the same as had been referred back to it at the 814th meeting.

63. Mr. ROSENNE said that he would vote in favour of the article although he maintained a reservation to paragraph 2 similar to that which he had made to article 19, paragraph 5.¹⁷

64. Mr. TSURUOKA said that he had expressed the hope¹⁸ that the Special Rapporteur would comment in

¹⁵ For earlier discussion, see 813th meeting, paras. 94-109, and 814th meeting, paras. 1-21.

¹⁶ For earlier discussion, see 814th meeting, paras. 22-30.

¹⁷ *vide supra*, para. 51.

¹⁸ 814th meeting, para. 29.

detail on paragraph 2, with regard to the responsibility of the State which had accepted the reservation.

65. Mr. BRIGGS said that he would vote in favour of the text, even though he had the same reservation concerning paragraph 2 as Mr. Rosenne.

66. Sir Humphrey WALDOCK, Special Rapporteur, said that the problem raised during the discussion, as to the time when notice of the withdrawal of a reservation should be deemed to have been received, had not been finally settled either by the Commission or by the Drafting Committee; it might need further thought at the next session.

67. Mr. PESSOU said that there appeared to be a contradiction in paragraph 2 between the phrases *Sauf disposition contraire du traité* and *et à moins qu'il n'en soit convenu autrement*.

68. Mr. REUTER said that it was due to the fact that the English word "or" had been rendered in French by *et*.

69. Mr. ROSENNE said that Mr. Pessou's comments led him to wonder whether the opening phrase of paragraph 1 was correct. Surely the purpose of the article was to facilitate the withdrawal of reservations; it was inconceivable that a treaty could come into being reservations to which could not be withdrawn.

70. The CHAIRMAN said that, after lengthy discussion, it had been recognized that the withdrawal of reservations was sometimes prohibited or made subject to certain conditions, in order to forestall unexpected situations for the other parties to the treaty.

71. Sir Humphrey WALDOCK, Special Rapporteur, said that the Chairman was perfectly correct and had sufficiently explained the reason for including the words "Unless the treaty otherwise provides", which should certainly be retained.

Article 22 was adopted by 16 votes to none.

ARTICLE 23 (Entry into force of treaties)¹⁹

72. Sir Humphrey WALDOCK, Special Rapporteur, said that the revised text of article 23 read:

"1. A treaty enters into force in such manner and upon such date as it may provide or as the States which adopted its text may agree.

2. Failing any such provision or agreement, a treaty enters into force as soon as all the States which adopted its text have consented to be bound by the treaty.

3. Where a State consents to be bound after a treaty has come into force, the treaty enters into force for that State on the date when its consent becomes operative, unless the treaty otherwise provides."

73. Drafting changes had been introduced in paragraphs 2 and 3 to bring the language into line with article 15, as suggested by Mr. Rosenne.

Article 23 was adopted by 17 votes to none.

¹⁹ For earlier discussions, see 789th meeting, paras. 59-74, 790th meeting, paras. 1-70, and 814th meeting, paras. 31-37.

ARTICLE 24 (Entry into force of a treaty provisionally)²⁰

74. Sir Humphrey WALDOCK, Special Rapporteur, said that the revised text of article 24 read:

"1. A treaty may enter into force provisionally if:

(a) The treaty itself prescribes that it shall enter into force provisionally pending ratification, accession, acceptance or approval by the contracting States; or

(b) The contracting States have in some other manner so agreed.

2. The same rule applies to the entry into force provisionally of part of a treaty."

75. Paragraph 1 (b) had been amended in response to the criticisms raised during the discussion, and paragraph 2 had been considerably shortened.

76. Mr. PESSOU asked if there were some technical reason for using the words "in some other manner" in paragraph 1 (b), instead of the word "otherwise" which appeared in other articles.

77. Sir Humphrey WALDOCK, Special Rapporteur, said that he held no brief for the phrase "in some other manner" but the original text, which had contained the word "otherwise", had been criticized. Drafting difficulties of that kind were not easy to overcome.

Article 24 was adopted by 17 votes to none.

78. The CHAIRMAN said that the Commission had adopted all the articles on the law of treaties which it had decided to complete at the current session. The articles were, of course, adopted provisionally, subject to whatever amendments might be made at later sessions.

79. He expressed the Commission's gratitude to the Drafting Committee, and particularly to the Special Rapporteur, for the contributions they had made to the progress achieved on the law of treaties.

Draft Report of the Commission on the work of its seventeenth session

(A/CN.4/L.111 and Add.1)

80. The CHAIRMAN invited the Commission to consider its draft report.

CHAPTER I: ORGANIZATION OF THE SESSION

(A/CN.4/L.111)

81. Mr. ELIAS, Rapporteur, said that chapter I contained, as in previous annual reports, particulars on the organization of the session.

Paragraphs 1-3

Paragraphs 1 to 3 were adopted without comment.

Paragraph 4

82. The CHAIRMAN suggested that perhaps the words "at least part of" should be added after the word "attended". During the session, cases of absence had been more numerous than usual, and that was rather a dangerous trend.

²⁰ For earlier discussions, see 790th meeting, paras. 71-103, 791st meeting, paras. 1-60, and 814th meeting, paras. 38-56.

83. Mr. ELIAS, Rapporteur, said that previous reports had not contained any indication of that kind.

84. Mr. BRIGGS said that, in the early years of the Commission, volume I of the *Yearbook* used to indicate the names of the members who had attended each meeting. That practice had been discontinued, with the result that it was impossible to tell whether a member had attended all the meetings of a session or only a few. He accordingly supported the Chairman's suggestion that paragraph 4 should be amended so as to indicate that all the members but one had attended the session at least in part.

85. Mr. ROSENNE said that it would be invidious to give any indication in the report on the question of attendance. The presentation of paragraph 4 was based on a decision taken by the Commission at a previous session. He proposed, therefore, that paragraph 4 should be adopted as it stood, but that the Commission should decide that, in future, volume I of the *Yearbook*, containing the summary records, should indicate, at the beginning of the record for each meeting, the names of the members who had attended that meeting.

86. Mr. BRIGGS supported Mr. Rosenne's proposal.

Mr. Rosenne's proposal was adopted.

Paragraph 4 was adopted, on the understanding that, for the future, volume I of the Yearbook would list the names of the members attending each meeting.

Paragraph 5

Paragraph 5 was adopted without comment.

Paragraph 6

Paragraph 6 was adopted with minor drafting amendments.

Paragraphs 7-10.

Paragraphs 7 to 10 were adopted without comment.

Chapter I, as a whole, was adopted.

CHAPTER IV : PROGRAMME OF WORK AND ORGANIZATION OF FUTURE SESSIONS (A/CN.4/L.111/Add.1)

87. Mr. ELIAS, Rapporteur, said that chapter IV outlined the main decisions of the Commission on its future work, and laid particular stress on the need for a winter session.

The first paragraph was adopted without comment.

88. Sir Humphrey WALDOCK proposed the deletion of the word "regretfully" before "concluded" in the last sentence of the second paragraph.

The second paragraph as thus amended was adopted.

89. Mr. LACHS said that the third sentence of the third paragraph indicated that the report on the work of the second part of the seventeenth session "would be published together with the report of the eighteenth session of the Commission". He thought, however, that each session of the Commission should constitute an entity; that remark applied to a winter session just as much as to a summer session.

90. Mr. BRIGGS said that the words "published together" should be replaced by "published at the same time", so as to bring the English text into line with the French. The reports could be presented in separate documents, but published at the same time.

91. Mr. AGO said that the sentence accurately described the situation. It had been necessary to reconcile two conflicting conditions. First, the Commission had decided that its winter session in January 1966 would be considered as the second part of its seventeenth session, and secondly, it would be physically impossible to submit the report on that winter session before the report on the eighteenth session, and to publish it elsewhere than in the 1966 *Yearbook*. To acknowledge the contradiction, the word "However" might be added in the third sentence of the paragraph.

92. Mr. ROSENNE pointed out that chapter II, on the law of treaties, would show that the January 1966 session would be devoted entirely to that topic, which would be fully reported on only at the end of the 1966 summer session. In the circumstances, there was no need to refer in chapter IV of the report to the question of the publication of the report for the January 1966 session. He proposed therefore the deletion of the words "would be published together with the report of the eighteenth session of the Commission, and".

93. Mr. ELIAS, Rapporteur, said that the question had been discussed very thoroughly by the officers of the Commission. He suggested that the Secretariat should explain the position.

94. Mr. WATTLES (Secretariat) said that the intention had been to produce in a single bound volume both the report of the second part of the seventeenth session and that of the eighteenth session; publication of separate volumes might have budgetary implications. It was unlikely that the second part of the seventeenth session would produce any results needing separate treatment: the work on the law of treaties and on special missions would be completed in the summer session of 1966 and it would be more practical if the report on the January 1966 session was presented together with the report of the eighteenth session.

95. Mr. BRIGGS supported Mr. Rosenne's proposal.

96. Sir Humphrey WALDOCK said he agreed with the Secretariat that the January 1966 session was unlikely to produce a long report, since it would be devoted largely to work on improving the text of the articles on the law of treaties. It would therefore be advisable to join the report of the January 1966 session with the final and full report for the summer session of 1966.

97. Mr. TUNKIN, also supporting Mr. Rosenne's proposal, said that details of publication could be left to the Secretariat.

98. The CHAIRMAN, speaking as a member of the Commission, likewise supported Mr. Rosenne's proposal.

Mr. Rosenne's proposal was adopted.

The third paragraph was adopted as amended.

Fourth paragraph

99. Mr. AGO proposed that the end of the first sentence be amended to read: "... to complete its

programme, and hence wishes to reserve the possibility of a two-week extension of its 1966 summer session.”

Mr. Ago's proposal was adopted.

The fourth paragraph, as thus amended, was adopted.

Fifth paragraph

The fifth paragraph was adopted without comment.

Sixth paragraph

The sixth paragraph was adopted, subject to a drafting change.

Chapter IV, as amended, was adopted.

The meeting rose at 1 p.m.

817th MEETING

Monday, 5 July 1965, at 3 p. m.

Chairman: Mr. Milan BARTOŠ

Present: Mr. Ago, Mr. Amado, Mr. Briggs, Mr. Castrén, Mr. Elias, Mr. Jiménez de Aréchaga, Mr. Lachs, Mr. Pal, Mr. Pessou, Mr. Rosenne, Mr. Ruda, Mr. Tsuruoka, Mr. Tunkin, Mr. Verdross, Sir Humphrey Waldock, Mr. Yasseen.

Special Missions

(A/CN.4/179)

(resumed from the 809th meeting)

[Item 3 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

ARTICLE 17 (General facilities) [17]¹

1. The CHAIRMAN said that the redraft of article 17 read:

“The receiving State shall accord to the special mission full facilities for the performance of its functions, having regard to the nature and task of the special mission.”

2. Speaking as Special Rapporteur, he said that article 17 was modelled on article 25 of the Vienna Convention on Diplomatic Relations, with the addition of the final phrase.

3. Mr. CASTRÉN pointed out that several members had opposed the final phrase.

4. The CHAIRMAN, speaking as Special Rapporteur, replied that several others had supported it, first because they considered that there should be no absolute analogy with diplomatic missions, and secondly, because there were cases where a special mission should have wider facilities than the permanent mission.

*Article 17 was adopted by 14 votes to none.*²

¹ For earlier discussion, see 804th meeting, paras. 16-48.

² For adoption of commentary, see 820th meeting, paras. 43-51.

ARTICLE 18 (Accommodation of the special mission and its members) [18]³

5. The CHAIRMAN said that the redraft of article 18 read:

“The receiving State shall assist the special mission in obtaining appropriate premises and suitable accommodation for its members and staff and, if necessary, ensure that such premises and accommodation are at their disposal.”

6. Speaking as Special Rapporteur, he said that the article reproduced article 21 of the Vienna Convention on Diplomatic Relations, with the addition of the final phrase.

*Article 18 was adopted by 14 votes to none.*⁴

ARTICLE 19 (Inviolability of the premises) [19]⁵

7. The CHAIRMAN said that article 19 read:

“1. The premises of a special mission shall be inviolable. The agents of the receiving State may not enter the premises of the special mission, except with the consent of the head of the special mission or of the head of the permanent diplomatic mission of the sending State accredited to the receiving State.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the special mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.”

8. He explained that the article reproduced *mutatis mutandis* the corresponding provisions of the Vienna Convention on Diplomatic Relations and of the Vienna Convention on Consular Relations.

9. Mr. TSURUOKA asked whether the words “the peace” in paragraph 2 were entirely adequate.

10. The CHAIRMAN said that they were used both in article 22 of the Vienna Convention on Diplomatic Relations and in article 31 of the Vienna Convention on Consular Relations.

*Article 19 was adopted by 16 votes to none.*⁶

ARTICLE 20 (Inviolability of archives and documents) [20]⁷

11. The CHAIRMAN said that article 20 read:

“The archives and documents of the special mission shall be inviolable at any time and wherever they may be.”

12. The article reproduced textually article 24 of the Vienna Convention on Diplomatic Relations.

*Article 20 was adopted by 16 votes to none.*⁸

³ For earlier discussion, see 804th meeting, paras. 49-76.

⁴ For adoption of commentary, see 820th meeting, paras. 52-60.

⁵ For earlier discussion, see 804th meeting, paras. 77-105, and 805th meeting, paras. 1-28.

⁶ For further discussion, see 820th meeting, paras. 29-31.

⁷ For earlier discussion, see 805th meeting, paras. 29-57.

⁸ For adoption of commentary, see 821st meeting, para. 2.